IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.13389 of 2007

MONDAY, THE SIXTEENTH DAY OF JULY TWO THOUSAND AND SEVEN

Between:

Akthar Mohiuddin @ Rajna, S/o. Abdul Wahed,
Aged 57 years, Occ: Business, R/o. H.No.2-4-94,
Bada Bazar, Bodhan, Nizamabad District.

… Petitioner

And

The Executive Engineer, Roads & Buildings,
Bodhan, Nizamabad District, and another.

… Respondents

Order:

This writ petition has been filed seeking Mandamus to declare the action of the respondents in taking steps for demolishing the structures of the petitioner covered by H.No.2-4-94 (Old 2-4-68) situated at Maskanoor Jangamgalli Corner, Bodhan, Nizamabad District for the purpose of road widening, without issuing notice and without initiating any proceedings under the Land Acquisition Act,

1894 (for short 'the Act') as arbitrary and illegal.

2. In the affidavit filed in support of the writ petition, it is stated that the mother of the petitioner was the original owner of the aforesaid property and during her lifetime she executed registered gift deed dated 09-10-1986 bequeathing the same in favour of the petitioner. The case of the petitioner is that he submitted an application to the second respondent seeking permission to construct a building in the property in question and the second respondent issued permission dated 21-04-1987. The grievance of the petitioner is that though he has not given consent and in the absence of any proceedings initiated under the Act, respondents are demolishing the structures raised by him, highhandedly.

3. The Commissioner, Bodhan Municipality, the second respondent herein, has filed counter affidavit stating that the Municipality has taken up widening of the road. It is stated that a general meeting was conducted in the proposed road widening area and all the people in the vicinity voluntarily came down with a proposal to widen the road with a small margin for the convenience of the general public. It is further stated that basing on the same the Municipality has proposed to widen the road by demolishing the structures of the people of the locality to a tune of 2' to 3' only. With regard to the structure of the petitioner, it is stated that it is already demolished to a tune of 2 ½ feet along with others basing on his oral consent.

4. Learned counsel for the petitioner submits that petitioner has never given consent for demolition of his structure; however the respondent without initiating any proceedings under the Act demolished the structure of the petitioner.

5. On the other hand, learned Standing Counsel for the respondent-Municipality submits that as majority of the residents of the locality have requested to widen the road and gave their consent for demolishing a part of their structures, including the petitioner who has given his oral consent, required portions were already demolished and no further area is required.

6. The contention of the respondent-Municipality that petitioner has given his oral consent for demolishing a portion of his property, which is disputed by the petitioner, cannot be accepted. Even assuming that any portion of the property an individual is required for any public purpose, he cannot be deprived of his property without due process of law being followed. If any private property of an individual is required for public purpose, either his consent has to be taken or steps have to be taken as per the provisions of the Land Acquisition Act, 1894.

7. As much as no portion of the property of the petitioner has been notified under the provisions of the Act and no consent of the petitioner is also obtained before demolishing his property, I direct the respondents not to take any further steps for demolishing his house or any portion thereof without following due process of law. With regard to the demolition which has already taken place, I leave it open to the petitioner to seek appropriate relief. However, this will not preclude the respondents either to notify the property of the petitioner under the provisions of the Act or to take consent of the petitioner in case any further area is required for the purpose of road widening.

8. The writ petition is accordingly disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY.

July 16, 2007
MRR